

RESPONSE UNDER 37 C.F.R. § 1.116
EXPEDITED PROCEDURE
TC/A.U. 1771

REMARKS/ARGUMENTS

Applicant's attorney thanks the Examiner for his comments and thoughtful analysis of the present application. Claims 1-34 are presented for the Examiner's consideration.

In the specification, the paragraph beginning at page 2, line 33 has been amended to remove the reference to "corona treatment," and to include the verbiage "or combinations thereof." Support for this amendment can be found in original filed claim 3.

Independent claim 1 has been amended to more clearly define the invention by including the additional feature that the components of the composite are treated to "retain" surface charges which create repulsive forces between the composite components upon fluid insult of the composite. Support for this amendment can be found on page 3, lines 4-8 of the specification. Claim 3 has been amended to remove the feature "corona treatment." Claims 20-34 are withdrawn.

Pursuant to 37 C.F.R. § 1.116, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

By way of the Office Action mailed January 23, 2006, the Examiner rejected claims 1-12 and 15-19 under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over U.S. patent number 6,562,743 to Cook et al. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

In accordance with MPEP § 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Applicant has amended independent claim 1 to include the additional feature that the components of the composite are treated to retain surface charges which create repulsive forces between the composite components upon fluid insult of the composite. Support for this

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amendment can be found on page 3, lines 4-8. Applicant has also removed reference to "corona treatment" in the specification and in claim 3.

In contrast to Applicant's invention, Cook et al. teach that when an absorbent core made with SAP particles and fibers treated with a polyvalent metal-ion containing compound according to their invention is exposed to liquid, the polyvalent metal ion is released from the fibers and is carried by the liquid. (See Cook et al. column 4, lines 8-12.) Cook et al. further teach that any compatible polyvalent metal ion-containing compound may be employed, provided that the compound releases the polyvalent metal ion upon exposure of the treated fiber to the liquid encountered in the core. (See Cook et al. column 4, lines 20-24.) In addition, Cook et al. require an ion extraction factor of at least 5%, further indicating that a surface charge is not retained, in contrast to Applicant's invention. (See e.g., Cook et al. Claim 1.)

Thus Cook et al. do not set forth each and every element as set forth in amended claim 1, as required by MPEP § 2131. With respect to claims 2-12 and 15-19, these claims are not anticipated since they are each dependent upon a patentable independent claim, as discussed above. If a given reference does not anticipate the limitations of the independent claim, then any claim depending from the independent claim is not anticipated. See e.g., *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). For at least these reasons, Applicant submits that the rejection of independent claim 1 has been overcome, and Applicant respectfully requests that the rejection of this claim under 35 U.S.C. § 102 be withdrawn.

By way of the Office Action mailed January 23, 2006, the Examiner rejected claims 13-14 under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. patent number 6,562,743 to Cook et al. in view of U.S. patent number 5,147,343 to Kellenberger. This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

In accordance with MPEP § 2142, the Examiner has the burden of establishing a prima facie case of obviousness by meeting three criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one

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of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 4899 (Fed. Cir. 1991).

Applicant submits that amended claim 1 is patentable over Cook et al. for the reasons discussed above. The additional teaching of Kellenberger with respect to claims 13 and 14, which depend upon claim 1 and include the limitations of claim 1, do not overcome the deficiencies with regard to amended claim 1. In particular, the Examiner states that "Kellenberger teaches an absorbent composite comprising a porous matrix of fibers and superabsorbent (SAP) material" and that "Several examples are taught by Kellenberger including Example VIII with 57% of the SAP particles between 300 and 600 micrometers." (See Office Action mailed August 10, 2005, page 8.) However, Kellenberger does not disclose that the components of the composite are treated to retain surface charges which create repulsive forces between the composite components upon fluid insult of the composite, as required by claims 13 and 14. Thus, at least the third prong of the test required by MPEP § 2142 (i.e., the references must teach or suggest all the claim limitations) has not been met. For at least these reasons, a prima facie case of obviousness has not been established for claims 13 and 14, based on amended claim 1. Applicant respectfully requests that this rejection of claims 13 and 14 under 35 U.S.C. § 103 be withdrawn.

By way of the Office Action mailed January 23, 2006, the Examiner provisionally rejected claims 1, 3, 4, 5, 7-10 and 15-19 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claim 8 of copending Application No. 10/734,004. Applicant has amended the specification and claims to remove reference to "corona treatment." Applicant respectfully submits that by this amendment, this rejection has been overcome. However, should the Examiner maintain this rejection, the Applicant respectfully points out that the Examiner has not indicated any allowable claims with regard to Application No. 10/734,004. Therefore, Applicant does not wish to further act upon this

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provisional rejection at this time. However, at such time that claims are indicated as being allowed in Application No. 10/734,004, Applicant will then review the allowed claims and proceed accordingly.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance. Applicant intends to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicant has not addressed in this response, Applicant's undersigned attorney requests a telephone interview with the Examiner.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-4405.

Respectfully submitted,
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CERTIFICATE OF TRANSMISSION

I, Judith M. Anderson, hereby certify that on March 23, 2006 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703) 872-9306.

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